IN APPEAL.

JAMES BURNS, Appellant,

AND

GEORGE BURRELL, Respondent.

RESPONDENT'S CASE.

ST. REAL, ADVOCATE.

IN APPEAL.

JAMES BURNS, Appellant,

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PRVINCE OF LOWER CANADA, } **COURT OF APPEALS.**

JAMES BURNS, **Appellant,**

AND

GEORGE BURRELL, **Respondent.**

RESPONDENT'S CASE.

THE Appellant's Action in the Court below at Quebec, was an Action of Debt for £90 currency, for use and occupation of certain appartments and premisses of the Appellant.

The 1st. count states the Respondent to have used and occupied the premisses for one year, at and *for the yearly rent of* £90.

The 2d. count supposes no stipulated rent, but avers the use and occupation for the same period, *to be of the value of* £90.

To the Action were opposed by the Respondent

1st. A *Defense au fonds en fait,* containing a general denegation of the Appellant's allegations in point of fact, and 2dly. a *Perpetual Exception Péremptoire en Droit,* by which the Respondent alledges his occupation of the premisses in question, to have been *in virtue of a Notorial Lease* by him obtained from John Graves, the Appellant's Attorney, before Mr. Belanger and his colleague Notaries, according to which Lease the Respondent ought to have enjoyed not only the appartments and premisses mentioned in the Appellant's Declaration, but *the whole of the house and premisses therein mentioned, for one year, at the rate of* £90, and with this express condition that the Respondent, after the expiration of one year, might retain the premisses for another year, for the same price, if the Appellant should not return to Quebec, and make known to the Respondent, before the 1st. May 1816, his intention of occupying the house and dependencies by himself. The Respondent further alledges that the Appellant had neglected and refused to put him in possession of the entire premisses described in the Lease, by means whereof the Respondent had suffered damage in his trade to the amount of £300, and that the Appellant was still absent from this Province.

The Respondent also fyled an *Incidental cross Demande,* containing all the allegations of the *Exception,* and adding, as a special statement of damage, that in virtue of the Lease made to him by the Appellant's Attorney, the Respondent had himself let part of those premisses to one John Parker for one year, for £25, and that the Appellant and Graves his Attorney having refused to put the Resdondent in possession, he had also failed in the fulfillment of his Lease to Parker, who had brought his action against the Respondent and recovered £25 damages, and £7 1 8 costs, which the Respondent had paid.

He alledged also that his intention was to have carryed on his business of a Baker and Confectioner in the bake-house, which makes part of the premisses let to him, and that, by the Appellant's refusal to put him in possession of it, he had suffered heavy losses and sustained damage £300.

The Issues having been joined upon the Demande in chief, the parties proceeded to an Enquête, and clearly proved their respective allegations.

The cause was then heard upon the merit, and after a *déliberé,* which lasted

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24 Juillet 1818.

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laded from the 19th. October 1817 to the 3d. of February following, the Court dismissed the *Demande* in chief with costs.

The Appellant was regularly foreclosed from fyling a Plea to the Incidental *Demande*, and the Respondent proceeded *ex parte* to his Enquête, by which he so clearly established his case, that the Court below could not hasitate in condemning the Appellant to pay to the Respondent £250 damages with interest and costs,—and the object of the present Appeal is, if possible, to rid the Appellant of both these Judgments.

Quebec, 24th. July, 1818.

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